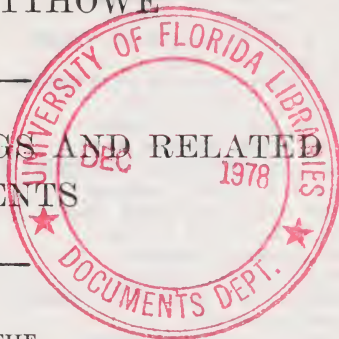


CONTEMPT PROCEEDINGS AGAINST
PATRICIA ATTHOWE

—
INCLUDING HEARINGS AND RELATED
DOCUMENTS
—



BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND
INVESTIGATIONS
OF THE
COMMITTEE ON INTERSTATE AND
FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES
NINETY-FIFTH CONGRESS
SECOND SESSION



MARCH 3 AND 17, 1978

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LETTER OF TRANSMITTAL

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., September 8, 1978.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: On June 27, 1978, the Subcommittee on Oversight and Investigations, by a 12 vote majority, approved a resolution finding Patricia M. Atthowe in contempt for failing to comply with a duly authorized congressional subpoena and directed me as its chairman to report the facts surrounding that contemptuous conduct to the Committee on Interstate and Foreign Commerce.

Pursuant to that directive, I am transmitting herewith a summary of the subcommittee's proceedings, together with hearing transcripts and other material which should be of assistance to our colleagues in their deliberations.

Sincerely,

JOHN E. MOSS,
Chairman, Subcommittee on Oversight and Investigations.
Enclosures.

CONTEMPT PROCEEDINGS AGAINST PATRICIA ATTHOWE

On February 7, 1978, the Subcommittee on Oversight and Investigations of the Committee on Interstate and Foreign Commerce of the U.S. House of Representatives authorized the issuance of subpoena No. 95-2-25 for service upon Patricia Atthowe of Research West, Inc. The subpoena seeks information about investigations of nuclear power critics by, or on behalf of, various public utility companies. Service of the subpoena was made by a U.S. marshal on February 14, 1978.

The subpoena directed Ms. Atthowe to provide the subcommittee with documents about "individuals or groups opposed to the use of atomic energy or deemed to be a threat to the security of nuclear facilities or activities" and the "means used by Research West, Inc., to obtain, receive, or exchange" such information. The subpoena required the submission of the requested documents to the subcommittee offices by February 23, 1978.

The attorney for Ms. Atthowe, Leonard Wolffe of the Pechner, Dorfman, Wolffe, Rovnich and Cabot law firm of Philadelphia, contacted subcommittee staff on February 17, 1978, requesting that the return date for the subpoena be extended and its scope be narrowed. Subcommittee Chairman John E. Moss extended the deadline for compliance with the subpoena to March 3, 1978 at 9:30 a.m.

Additional telephone conversations between Ms. Atthowe's attorney and subcommittee staff followed. On February 23, 1978, Chairman Moss informed Ms. Atthowe's counsel by letter that the scope of the subpoena would be narrowed in several specific ways and that, in the alternative, if subcommittee staff were provided with access to the specified documents with an opportunity to reproduce a still more limited number of documents, compliance with the subpoena would be deemed complete.

Ms. Atthowe, accompanied by her attorney, appeared before the subcommittee on the morning of March 3, 1978, in accordance with the subcommittee's subpoena and was sworn. In response to questions from Chairman Moss, Ms. Atthowe said that she did not have the requested documents with her, and that there was no physical or practical reason for not providing them to the subcommittee. Ms. Atthowe was then directed by Chairman Moss to return on March 17, pursuant to the same subpoena where she would be asked questions about whatever defenses she might have.

At the beginning of the March 17 meeting, Chairman Moss briefly recited the facts about the issuance of the subcommittee's subpoena upon Ms. Atthowe, and then detailed the legislative relevance of the subcommittee's inquiry and its jurisdiction as follows:

The subcommittee's interest in these materials is substantial. The subcommittee is engaged in an investigation of allegations that regulated utilities have directly, or through their agents or contractors, unduly intruded into the privacy of Americans. It has been further alleged that unwarranted surveillance has been particularly focused upon critics of commercial nuclear powerplants.

If such allegations turn out to be true, legislation may be needed to protect citizens from undue snooping, prying or recordkeeping by utilities. Of concern to each of us who pays gas or electric bills is the extent to which utilities may be passing through the costs associated with such suspect activities to consumers.

The information we seek through this subpoena is relevant to legislation already before the House. H.R. 11392, the Department of Energy Authorization Act now pending before several committees of the House, including the Committee on Interstate and Foreign Commerce, could be amended to establish limitations on the passthrough to consumers of costs associated with such surveillance activities.

Similarly the Natural Gas and Federal Power Acts could be amended to forbid such activities or limit the extent to which ratepayers are required to subsidize unwarranted surveillance or recordkeeping.

Of equal concern to this subcommittee is the quality of the intelligence data which utilities and Government rely upon in safeguarding nuclear facilities. Security precautions are a reality of life in the nuclear age. The material to be supplied by Research West is important to an understanding of the role of private contractors in this area. In the event this information proves inadequate, legislation may be required to regulate intelligence gathering.

The authority of the subcommittee to carry out this investigation is clear. By a resolution of the Committee on Interstate and Foreign Commerce agreed to on February 8, 1977, this subcommittee was given the responsibility for oversight of agencies, departments, and all programs within the jurisdiction of the full committee, and to conduct such investigations within such jurisdiction. Clause 1.(L) of rule X of the Rules of the House of Representatives provides the Committee on Interstate and Foreign Commerce with jurisdiction over, among other things, "Interstate and foreign commerce . . . petroleum and natural gas . . . regulation of interstate transmission of power [and] consumer affairs and consumer protection." In addition, clause 3.(H) imposes on the committee the responsibility of "reviewing and studying on a continuing basis all laws, programs and Government activities relating to nuclear energy."

With these grants of jurisdiction come responsibilities which the Chair takes very seriously. Rule X provides that:

Each standing committee—other than the Committee on Appropriations and the Committee on the Budget—shall review and study, on a continuing basis, the application, administration, execution, and effectiveness of those laws, or parts of laws, the subject matter of which is within the jurisdiction of that committee, and the organizations and operation of the Federal agencies and entities having responsibilities in or for the administration and execution thereof, in order to determine whether such laws and the programs thereunder are being implemented and carried out in accordance with the intent of the Congress and whether such programs should be continued, curtailed, or eliminated.

"In addition, each such committee shall review and study any conditions or circumstances which may indicate the necessity or desirability of enacting new or additional legislation within the jurisdiction of that committee—whether or not any bill or resolution has been introduced with respect thereto—and shall on a continuing basis undertake future research and forecasting on matters within the jurisdiction of that committee."

As I stated earlier, the major interest of the subcommittee is the extent to which public utilities subject to, or potentially subject to, Federal regulation are engaged directly, or indirectly, in unwarranted intrusions into the privacy of citizens or the extent to which utilities rely upon the kind of information which is made available through Research West, Inc.—the quality and reliability.

Ms. Atthowe is the proprietor of Research West, Inc. This corporation is allegedly in the business of supplying information on political dissidents and subversives to corporate clients, among them major regulated utilities on both coasts.

The material required of Ms. Atthowe, then, is directly pertinent to the subcommittee's current investigation, which is squarely within the authority and jurisdiction of this subcommittee in pursuit of a valid legislative purpose.

Ms. Atthowe was accompanied by her attorney, Leonard L. Wolffe. In response to questions from Chairman Moss, she said she had received, and was in possession of, copies of the relevant Rules of the House of Representatives and the Committee on Interstate and Foreign Commerce; that she had heard the chairman's opening statement summarizing the subcommittee's authority, legislative interest, and the pertinency of the subpoenaed material to its current

investigation; that she had received a copy of the subcommittee's subpoena dated February 7, 1978; that she had not brought the requested documents with her that there was not practical or physical reason for not doing so; and that she was aware of the February 23, 1978 letter from Chairman Moss to her attorney which offered to limit the scope of the subcommittee's subpoena, and of the contents of that letter.

When asked by Chairman Moss whether she was "refusing to comply with [subcommittee's] subpoena dated February 7, 1978," Ms. Atthowe answered, "Yes, I am." The chairman asked what section of law or constitutional authority was she relying upon for her refusal to comply with the subcommittee's subpoena. She answered that her position was based on the first amendment protection of free speech and freedom of the press and the fifth amendment protection against the taking of property without just compensation.

After a series of questions, Chairman Moss said that he knew of no authority to support her refusal based on either grounds. Chairman Moss noted that the U.S. Supreme Court held in the case *Branzburg v. Hayes*, 408 U.S. 665 (1973) that there was no privilege for news reporters implied in the first amendment. Even if there was such a privilege, the chairman said that there was no evidence to show that Ms. Atthowe was a bona fide journalist.

Chairman Moss said that after an exhaustive search, the subcommittee staff and the Library of Congress could find only one article written by Patricia Atthowe, a commentary published in a trade publication entitled "Security Management." Despite several questions, Ms. Atthowe was unable to cite any other bylined articles by her. As for the taking-of-property-without-just-compensation issue, Chairman Moss said that it resolved in favor of Congress in the case of *Ashland Oil Co. v. Federal Trade Commission, et al.*, 409 F. Supp. 297 (1976).

At the conclusion of questions concerning Ms. Atthowe asserted defenses, she was again asked to comply with the subcommittee's subpoena. At that time she was again requested to comply:

Mr. Moss. Do you still refuse to comply with this subpoena?

Ms. ATTHOWE. Mr. Moss, I do not believe that I have a legal obligation to self-destruct.

Mr. Moss. Do you refuse to comply with this subpoena?

Ms. ATTHOWE. Yes, sir, I do refuse to supply—

Mr. Moss. You do refuse to comply and deny the committee the materials subpoenaed.

Now, do you understand that, as a consequence of your refusal, this matter may be referred to the Committee on Interstate and Foreign Commerce and to the House of Representatives for appropriate action, action which could lead to criminal penalties for you?

Ms. ATTHOWE. Yes, sir, I do.

Mr. Moss. And you still refuse to supply the subpoenaed materials to the subcommittee knowing full well the risks involved?

Ms. ATTHOWE. I respectfully decline to go out of business.

On June 27, 1978 the Subcommittee on Oversight and Investigations, by a vote of 9 to 2, found Ms. Atthowe in contempt of Congress and directed Chairman Moss to refer the matter to the Committee on Interstate and Foreign Commerce for appropriate action.

HEARING

FRIDAY, MARCH 3, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room 2123, Rayburn House Office Building, Hon. John E. Moss (chairman of the subcommittee) presiding.

Mr. Moss. The subcommittee will be in order.

The committee meets today for the purpose of receiving a return on a subpoena, Subpena No. 95-2-25, issued by this committee on February 7, 1978.

It was served on Patricia Atthowe, a resident of Emoryville, Calif. Service was completed on February 14, 1978.

The Chair will ask Ms. Atthowe to stand and be sworn.

Do you solemnly swear the testimony you are about to give this subcommittee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. ATTHOWE. Yes, I do.

Mr. Moss. Would you give your name and address to the hearing reporter?

**STATEMENT OF PATRICIA M. ATTHOWE, EMORYVILLE, CALIF.,
ACCOMPANIED BY LENARD L. WOLFFE, ATTORNEY, PHILADELPHIA, PA., AND KEVIN P. KELLY, LAW CLERK, PHILADELPHIA, PA.**

Ms. ATTHOWE. My name is Patricia M. Atthowe. My address is suite 300, Bay Bridge Office Plaza, Emoryville, Calif., 94608.

Mr. Moss. You are responding to the subpoena issued by this subcommittee on February 7. Do you now have with you the material requested?

Ms. ATTHOWE. I do not.

Mr. Moss. Is there any physical or other reason that the material is not now available?

Ms. ATTHOWE. Yes; I do have reasons why the material is not available. I respectfully request the committee to allow me to read a statement into the record.

Mr. Moss. No. This committee is well experienced in the matter of dealing with the actions which appear to constitute or could constitute contempt of the Congress.

We will have you answer the specific questions that we will direct to you.

The Chair is only going to determine this morning whether or not you have the material with you and are prepared to deliver it to the subcommittee.

What is your answer to that?

Ms. ATTHOWE. I am sorry?

Mr. MOSS. The Chair will determine only this morning whether or not you have the material with you in response to the subpoena and whether you are prepared to deliver it to the subcommittee.

Mr. WOLFFE. Mr. Chairman.

Mr. MOSS. Counsel, if you would direct your attention to rule (k)(3) of the Rules of the House of Representatives, Subcommittee on Oversight and Investigations, then you will respond to the Chair asking if you are trying to intervene for the purpose of making some determination directly relevant to the purposes of counsel set forth in rule (k)(3). It is rule 11(k)(3).

Mr. WOLFFE. I believe it falls within the purview of the rules, sir.

Mr. MOSS. Are you asking the Chair for the purpose of advising your client; is that correct?

Mr. WOLFFE. I am sorry?

Mr. MOSS. You are asking the Chair the question for the purpose of advising your client?

Mr. WOLFFE. Yes.

Mr. MOSS. The Chair will be indulgent on that. You may ask a question.

Mr. WOLFFE. A brief and respectful question, sir.

I would ask on behalf of the witness whether the Chair would entertain the submission of a statement in writing at the close of the meeting?

Mr. MOSS. No; this committee, a little over 2 years ago, in citing the Secretary of Commerce for contempt, declined to receive a statement from the Secretary of Commerce. There is no reason for us to receive a statement here. We are here for the purpose of receiving a return on the subpoena.

Mr. WOLFFE. I most respectfully, sir, would ask in this particular instance that this——

Mr. MOSS. With the utmost patience and the greatest of respect and forbearance, the Chair must decline that.

Mr. WOLFFE. I am sorry.

Mr. MOSS. The Chair, then, will inform you that on March 17, this committee will be convened and you will be required to be present for the purpose of the committee considering the recommendation of the Chair that it then instruct that you immediately respond or invoke a citation for recommendation for contempt of Congress.

With that, the committee will stand adjourned until March 17, 1978.

[Whereupon, at 9:40 a.m., the subcommittee was adjourned.]

HEARING

Consideration of Subpena

FRIDAY, MARCH 17, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATION,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2123, Rayburn Office Building, Hon. John E. Moss [chairman of the subcommittee] presiding.

Mr. Moss. The committee will be in order.

The matter before the subcommittee today is receipt of materials required of Patrician Atthowe by subpoena No. 95-2-25. This subpoena was duly authorized by the subcommittee on February 7, 1978. It was served on Ms. Atthowe in Emeryville, Calif., the location of her business, Research West, Inc., on February 14, 1978.

The subcommittee's interest in these materials is substantial. The subcommittee is engaged in an investigation of allegations that regulated utilities have directly, or through their agents or contractors, unduly intruded into the privacy of Americans. It has been further alleged that unwarranted surveillance has been particularly focused upon critics of commercial nuclear powerplants.

If such allegations turn out to be true, legislation may be needed to protect citizens from undue snooping, prying or recordkeeping by utilities. Of concern to each of us who pays gas or electric bills is the extent to which utilities may be passing through the costs associated with such suspect activities to consumers.

The information we seek through this subpoena is relevant to legislation already before the House. H.R. 11392, the Department of Energy Authorization Act now pending before several committees on the House, including the Committee on Interstate and Foreign Commerce, could be amended to establish limitations on the pass-through to consumers of costs associated with such surveillance activities.

Similarly the Natural Gas and Federal Power Acts could be amended to forbid such activities or limit the extent to which ratepayers are required to subsidize unwarranted surveillance or recordkeeping.

Of equal concern to this subcommittee is the quality of the intelligence data which utilities and Government rely upon in safeguarding nuclear facilities. Security precautions are a reality of life in the nuclear age. The material to be supplied by Research West is important to an understanding of the role of private contractors in this area.

In the event this information proves inadequate, legislation may be required to regulate intelligence gathering.

The authority of the subcommittee to carry out this investigation is clear. By a resolution of the Committee on Interstate and Foreign Commerce agreed to on February 8, 1977, this subcommittee was given the "Responsibility for oversight of agencies, departments, and all programs within the jurisdiction of the full committee and to conduct such investigations within such jurisdiction." Clause 1.(L) of rule X of the Rules of the House of Representatives provides the Committee on Interstate and Foreign Commerce with jurisdiction over, among other things, "Interstate and foreign commerce generally . . . petroleum and natural gas . . . regulation of interstate transmission of power . . . consumer affairs and consumer protection." In addition, clause 3.(H) imposes on the committee the responsibility of "reviewing and studying on a continuing basis all laws, programs and Government activities relating to nuclear energy."

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In addition, each such committee shall review and study any conditions or circumstances which may indicate the necessity or desirability of enacting new or additional legislation within the jurisdiction of that committee—whether or not any bill or resolution has been introduced with respect thereto—and shall on a continuing basis undertake future research and forecasting on matters within the jurisdiction of that committee.

As I stated earlier, the major interest of the subcommittee is the extent to which public utilities subject to, or potentially subject to, Federal regulation are engaged directly, or indirectly, in unwarranted intrusions into the privacy of citizens or the extent to which utilities rely upon the kind of information which is made available through Research West, Inc.—the quality and reliability.

Ms. Atthowe is the proprietor of Research West, Inc. This corporation is allegedly in the business of supplying information on political dissidents and subversives to corporate clients, among them major regulated utilities on both coasts.

The material required of Ms. Atthowe, then, is directly pertinent to the subcommittee's current investigation, which is squarely within the authority and jurisdiction of this subcommittee in pursuit of a valid legislative purpose.

Ms. Atthowe, you were sworn at your earlier appearance on March 3, before this committee. Therefore, you continue as a witness under oath before this committee.

Has the subcommittee supplied you with the relevant rules and resolutions of the House of Representatives and the Committee on Interstate and Foreign Commerce?

Ms. ATTHOWE. They have—a few minutes before the hearing.

Mr. Moss. The rule, Ms. Atthowe, says that, at the time of the hearing they shall be made available to you.

Therefore, for the record, the answer is yes they have.

They not only made them available to you but supplied them directly to you. Is that correct?

Ms. ATTHOWE. Yes.

Mr. Moss. Did you hear my opening statement in which I summarized this subcommittee's authority, legislative interest, and the pertinency of the subpoenaed material to its current investigation?

Ms. ATTHOWE. Yes; I did.

Mr. Moss. Did you receive a copy of this subcommittee's subpoena dated February 7, 1978?

Ms. ATTHOWE. Yes; I did.

Mr. Moss. Have you brought with you the materials called for by the subpoena dated February 7, 1978?

Ms. ATTHOWE. No; I have not.

Mr. Moss. Is there any physical or practical reason why these materials have not been provided?

Ms. ATTHOWE. May I consult with counsel?

Mr. Moss. Yes; indeed you may.

[Witness consults with counsel.]

Ms. ATTHOWE. I would answer no, that there is no physical disability; but there would be a practical concern because the volume of the material that you have requested would be very difficult for me to ship to Washington. And there are other issues—constitutional issues—which I assume you would—

Mr. Moss. Ms. Atthowe, you may state the practical reason. We will deal with any other reason at a later time.

Ms. ATTHOWE. Well, I am a little confused about the definition of "practical," Mr. Moss. Perhaps you could describe it for me.

Mr. Moss. All right, we shall now deal with that.

Ms. Atthowe, are you aware of the letter sent by me to your counsel, Mr. Lenard Wolffe, of Pechner, Dorfman, Wolffe, Rovnick & Cabot, 1845 Walnut Street, Philadelphia, Pa., on February 23, 1978?

Ms. ATTHOWE. Yes.

Mr. Moss. Are you aware that the committee at that time offered to dispatch its staff through our research headquarters for the purpose of reviewing the material and designating in a very limited sense the material which would be required to be copied and supplied to the committee?

Ms. ATTHOWE. "Limited," again, is a very subjective word, sir; and we seem to have a controversy over that.

Mr. Moss. Are you aware of the letter?

Ms. ATTHOWE. I am aware of the letter.

Mr. Moss. And you are aware of its content?

Ms. ATTHOWE. I am aware of its content.

Mr. Moss. All right.

Are you refusing to comply with the subpoena dated February 7, 1978?

Ms. ATTHOWE. I have brought no documents with me.

Mr. Moss. Are you refusing to comply with the subpoena dated February 7, 1978?

Ms. ATTHOWE. Yes; I am.

Mr. Moss. You are refusing.

Upon what section of law or the Constitution do you rely on refusing to comply with the subcommittee's subpoena?

Ms. ATTHOWE. The first amendment and that portion of the fifth amendment which does not allow the Congress to confiscate property without due process or compensation.

Mr. Moss. The first amendment. What right under the first amendment?

Ms. ATTHOWE. Free speech, free press.

I have a statement and I am prepared to present to the committee——

Mr. Moss. I have read the statement, Ms. Atthowe. The committee is interested in a response to its subpoena and not to a statement for purposes of propaganda. The statement is not relevant to the line of inquiry presently underway.

The Chair, having read it very carefully, finds that there is no case, there is no precedent to support the claim that you have made under the first amendment, which you relate to your role as a journalist.

To what extent are you a journalist? Do you regularly publish under your byline in newspapers or periodicals distributed in the United States?

Ms. ATTHOWE. We have published over the last 8 years in newspapers and periodicals in the United States. All of this is part of my statement.

Mr. Moss. The Library of Congress——

Ms. ATTHOWE. Some of these are bylined, and some of them are not bylined. We do investigative reporting.

Mr. Moss. Publication under your name, Ms. Atthowe, would be the only relevant factor in judging whether or not you are a journalist.

Ms. ATTHOWE. That may be another issue of controversy.

Mr. Moss. The Library of Congress, after a very thorough research of the files available to it of all published material, indexes of published material, have determined one article and one only was available: a September 1977 article entitled "Issues of Substance" by Patricia M. Atthowe, president of Research West, Inc., in the magazine Security Management.

None other appears at any of the index of published material of periodicals.

Do you publish regularly in any magazine or periodical under your byline?

Ms. ATTHOWE. We have provided investigative reporting——

Mr. Moss. Ms. Atthowe, the question has been asked, and you will respond directly to that question and to no other.

Do you regularly publish in any magazines or periodicals or do you regularly publish——

Ms. ATTHOWE. Yes; I regularly pub——

Mr. Moss [continuing]. Under your own byline in any kind of format of general circulation?

Ms. ATTHOWE. We publish in formats of general circulation, but many times unbylined.

That is the answer to your question.

Mr. Moss. The answer is that you do not publish under your byline.

The Chair can't, of course—first of all, the controlling cases on the role of a journalist do not recognize a first amendment protection against supplying. As a matter of fact, in probably the most important case, *Branzburg v. Hayes*, 408 U.S. 665, 695, the court concluded that it could not—and I quote—

Accept the argument that the public interest in possible future news about crime from undisclosed, unverified sources must take precedence over the public interest in pursuing and prosecuting those crimes reported to the press by informants and thus deterring the commission of such crime in the future.

The court has made it quite clear there is—as I say—no case supportive of the position you are taking.

What is the next point? The taking of property.

This committee, just 2 years ago, litigated with Ashland Oil Co., a similar contention. The committee prevailed in the U.S. District Court and in the U.S. District Court for the District of Columbia. Ashland determined not to carry the case further.

The committee has litigated the matter. The committee, again, does not recognize the validity of any such claim—

Ms. ATTHOWE. Ashland Oil is not in the information business.

Mr. Moss. Ashland Oil made the same contention you do, that we were taking property—

Ms. ATTHOWE. You are.

Mr. Moss [continuing]. Without just compensation.

That is your opinion. The committee's conclusion is to the contrary.

What is the additional ground, the additional legal authority upon which you place reliance?

Ms. ATTHOWE. May I consult please?

Mr. Moss. You may indeed. You may consult counsel.

Let the record show that you are represented by counsel. The counsel is Mr. Wolfe of the previously mentioned firm in Philadelphia. [Witness consults with counsel.]

Ms. ATTHOWE. *Paul Sweezy v. the State of New Hampshire*, 354 U.S. 234.

John T. Watkins v. the United States of America, 354 U.S. 178.

United States of America v. Edward A. Rumely, 345 U.S. 41.

Mr. Moss. Staff will please pick up the citations and bring them to me.

Mr. ATKISSON. Mr. Chairman, may I ask that the Chair ask counsel to briefly state the holding in each case?

Mr. Moss. The question is being directed to you, Mr. Wolfe, to briefly state the holding in each of the cited cases.

Mr. WOLFFE. I do not think I can really do that very briefly.

Mr. ATKISSON. I suspected not.

Thank you, Mr. Chairman.

Mr. WOLFFE. I can do it; it is just not very brief.

Mr. Moss. The Chair again, having not only relied upon very careful research by the staff of this subcommittee but upon two rather extensive memorandums from the Congressional Reference Service of the Library of Congress, finds no precedents supportive of the claim. In view of the committee's own litigating of the issue with Ashland Oil Co., as recently as 2 years ago, cannot accept your contention as valid.

Are these the only legal claims upon which you rely as a basis for your refusal?

[Witness consults with counsel.]

Ms. ATTHOWE. Yes.

Mr. MOSS. Well, I again say to you that the subcommittee is authorized to carry out this investigation. The documents subpoenaed are pertinent to this investigation. This investigation is being carried out for a valid legislative purpose.

Now, Ms. Atthowe, I do order you and direct that you comply promptly with this subpoena and produce the material for this committee.

[No response.]

Mr. MOSS. Do you still refuse to comply with this subpoena?

Ms. ATTHOWE. Mr. Moss, I do not believe that I have a legal obligation to self-destruct.

Mr. MOSS. Do you refuse to comply with this subpoena?

Ms. ATTHOWE. Yes, sir, I do refuse to supply—

Mr. MOSS. You do refuse to comply and deny the committee the materials subpoenaed.

Now, do you understand that, as a consequence of your refusal, this matter may be referred to the Committee on Interstate and Foreign Commerce and to the House of Representatives for appropriate action, action which could lead to criminal penalties for you?

Ms. ATTHOWE. Yes, sir, I do.

Mr. MOSS. And you still refuse to supply the subpoenaed materials to the subcommittee knowing full well the risks involved?

Ms. ATTHOWE. I respectfully decline to go out of business.

Mr. MOSS. The committee will now stand adjourned.

The committee will meet at a date already announced for the purpose of continuing action on this matter.

[Whereupon, at 10:25 a.m., the subcommittee recessed.]

[ORIGINAL]

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS
OF THE UNITED STATES OF AMERICA

To: U.S. Marshal.

You are hereby commanded to summon Patricia Atthowe, Research West, Inc., Suite 300, Bay Bridge Office Plaza, Emeryville, Calif., to be and appear before the Subcommittee on Oversight and Investigations (under the authority of rules X and XI of the Rules of the House of Representatives, 95th Congress) of the Interstate and Foreign Commerce Committee of the House of Representatives of the United States, of which the Hon. John E. Moss is chairman, and to bring with her the documents described in the attachment to this subpoena (personal appearance is not required if the described documents are surrendered in the subcommittee offices on or before 5 p.m., Tuesday, February 21, 1978) in their chamber in the city of Washington, on Thursday, February 23, 1978, in room 2323, Rayburn House Office Building, at the hour of 9:30 a.m., then and there to testify touching matters of inquiry committed to said committee; and he is not to depart without leave of said committee.

Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 7th day of February, 1978.

HARELY O. STAGGERS, *Chairman.*

Attest: EDMUND L. HENSHAW JR., CLERK.

ATTACHMENT TO SUBPENA No. 95-2-25

All records, papers, correspondence, documents, notes, memoranda, telephone logs, appointment logs, files, and any other materials in the possession or control of Research West, Inc., containing information about:

(1) Individuals or groups opposed to the use of atomic energy or deemed to be a threat to the security of nuclear facilities or activities including but not limited to information about: any present or former Member of Congress, Ralph Nader, Natural Resources Defense Council, Anthony Roisman, Georgia Power Project, Helen Mills, Clamshell Alliance, Abalone Alliance, American Friends Committee, Friends of the Earth, Jeff Knight, Union of Concerned Scientists, Bob Pollard, MHB Technnical Associates, and Richard Hubbard;

(2) The methods, practices, or other means used by Research West, Inc., to obtain, receive, or exchange information about individuals or groups opposed to the use of atomic energy or deemed to be a threat to the security of nuclear facilities or activities.

(3) The methods, practices, or other means that are used by the federal, state, local, and/or private agencies or groups that supply the Research West, Inc., with information on individuals or groups opposed to the use of atomic energy or deemed to be a threat to the security of nuclear facilities or activities.

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 23, 1978.

Re Subpena No. 95-2-25, Research West, Inc.

LEONARD WOLFFE, *Esquire*,
Pechner, Dorfman, Wolfe, Rovnich & Cabot,
Philadelphia, Pa.

DEAR MR. WOLFFE: This will confirm your telephone conversation of February 17, 1978, with John Atkisson of our staff, with respect to the terms and conditions of subcommittee Subpena No. 95-2-25, issued February 7, 1978, and served thereafter on Patricia Atthowe of Research West, Inc. Accordingly, the terms of the subpena are extended and delimited as follows:

(1) The indicated return date of February 23, 1978, is hereby extended to Friday, March 3, 1978, at 9:30 a.m. Please note that personal appearance is not required if the described documents are surrendered in the subcommittee offices on or before 5 p.m. Tuesday, February 28, 1978.

(2) The scope of the subpoena is limited to materials originating from January 1, 1974, to the present. (The subcommittee reserves the right to extend this time period if necessary.)

(3) Materials responsive to this subpoena need not include freely available periodicals or other published and public items collected by Research West, Inc., provided, however, that for each file containing such publicly available materials the subcommittee will be supplied with a brief statement to that effect with a generic description of the materials omitted.

(4) Neither do materials responsive to this subpoena need to include such information as may have been gathered in response to a direct threat of violent physical harm to persons or facilities of Research West, Inc., or any client or potential client of Research West, Inc.

In lieu of production of the above referenced materials, please be advised that if subcommittee staff is given access to the files of Research West in its California offices on or before Thursday, March 2, 1978, and permitted to interview parties at Research West responsible for its functions and operations, and to designate for duplication and delivery to the staff at that time those specific files or portions thereof, within the scope of the subpoena, determined by the staff to be pertinent to its inquiry, then compliance with the subpoena will be deemed to be complete.

Further, you should be aware that failure to accept these greatly liberalized terms may expose your client, Ms. Atthowe, to a citation for contempt of Congress with attending criminal liability.

Many thanks for your prompt attention to this matter.

Sincerely,

JOHN E. MOSS,

Chairman, Subcommittee on Oversight and Investigations.

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

MEMORANDUM

Date: March 1, 1978.

To: Members of the Subcommittee on Oversight and Investigations.

From: Chairman John E. Moss.

Subject: Possible noncompliance with subpoena No. 95-2-25.

At its last business meeting the subcommittee authorized subpoena No. 95-2-25 to Patricia Atthowe of Research West, Inc. Ms. Atthowe is the proprietor of Research West and as such is the custodian of the records maintained by this corporation.

The principal business of Research West, Inc., is the provision to major corporations of information on political dissenters and "subversives". In particular, the subcommittee has been informed that Research West has been concerned with critics of commercial nuclear power. The company is known to have provided profiles and intelligence reports to several regulated utilities.

It is an apparently lucrative business. According to filings with the Federal Energy Regulatory Commission, one major west coast utility, Pacific Gas and Electric Co., has spent in excess of \$80,000

for Research West's services over the last 5 years. On the east coast, Georgia Power spent \$7,226 for allegedly similar services during 1975 and 1976.

In order to ascertain the nature and extent of surveillance activities being directed at private citizens by utilities operating nuclear reactors, the subcommittee authorized a subpoena (copy attached) to Research West, Inc., on February 7, 1978. This was served on Ms. Atthowe at her place of business in Emeryville, Calif., on February 14, 1978.

On February 17, 1978, Ms. Atthowe's retained counsel, Leonard Wolffe of Pechner, Dorfman, Wolffe, Rovnich & Cabot of Philadelphia, contacted John Atkisson, counsel to the subcommittee, requesting (1) an extension of the time of return of the subpoena, and (2) a narrowing of its scope. In view of the late service date of the subpoena, an extension was routinely granted until Friday, March 3, at 9:30 a.m.

After further telephone discussions between Mr. Wolffe and Mr. Atkisson, and after consultation with the staff, I advised Mr. Wolffe that the scope of the subpoena would be narrowed considerably, and further stated that if staff were allowed access to the requested materials, with only limited production thereafter, compliance would be deemed to be complete. My letter is attached.

Notwithstanding the dramatic narrowing of the subcommittee's request, Ms. Atthowe has apparently taken the position that congressional scrutiny of any of her intelligence-gathering methods, the nature of the information collected, and the entities to whom it is disseminated, is unwarranted.

As of March 1, 1978, Mr. Wolffe has refused to indicate whether his client will comply with the subcommittee's subpoena. Ms. Atthowe is required to appear before the subcommittee on the extended return date of March 3, 1978, at 9:30 a.m., Friday.

The subcommittee's authority to require the production of the records identified in subpoena 95-2-25 is clear. The subcommittee has made every effort to accommodate Ms. Atthowe. The Chair will recommend, in the absence of compelling evidence in her favor, that Ms. Patricia Atthowe be cited for contempt of Congress if she does not comply fully with the subcommittee's narrowed demand on March 3, 1978.

Attachments.

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., March 15, 1978.

To: House Subcommittee on Oversight and Investigation. Attention Mr. Tom Greene.

From: American Law Division.

Subject: Contempt vote by subcommittee.

Reference is made to your inquiry concerning a witness appearing before the subcommittee on the return date of a subpoena duces tecum but the witness does not have the subpoenaed documents with her. A quorum of the subcommittee (2, see House rule XI, cl. 2, (h)(1); and *U.S. v. Bryan*, 339 U.S. 323 (1950)), will be present at the hearing, but there will not be a quorum necessary (a majority of the subcommittee must be present, House rule XI, cl. 2, (1), (A)) to order a measure or recommendation reported.

What is the legal situation as respects a finding of contempt against the witness?

Failure to produce the records in response to a lawfully issued subpoena constitutes a willful default under 2 U.S.C. § 192. This does not mean that the failure to comply with the subcommittee's order must necessarily be for a bad or evil purpose, but only that the refusal was deliberate and not a mere inadvertence or accident (*Fields v. U.S.*, (C.A.D.C., 1947) 164 F.2d 97, *cert. den.* 332 U.S. 851; *Barsky v. U.S.*, (D.A.D.C., 1948) 167 F.2d 241, *cert. den.* 334 U.S. 843, rehearing *den.* 339 U.S. 971).

The procedure in the subcommittee might progress as follows:

(a) The chairman swears in the witness.

(b) The chairman explains the nature of the purpose and the scope of investigation, the authority to conduct it by the subcommittee, the lawful issuance of the subpoena duces tecum, the items sought in the subpoena, and the pertinency of the items to the investigation. He may give a copy of his remarks to the counsel for the witness.

(c) The committee then demands the production of the books, records, et cetera., mentioned in the subpoena.

(d) The witness may wish to introduce an opening statement setting forth her reason for refusing to produce the records, and so forth, reasons such as lack of authorization of subcommittee, lack of possession of the materials by the witness, insufficiency of the subpoena (i.e., lack of pertinency), or wrongful issuance thereof, et cetera.

NOTE.—The refusal of a committee to permit a witness to make a statement before she is sworn (*Eisler v. U.S.*, (C.A.D.C., 1948) 170 F.2d 273, *cert. den.* 388 U.S. 883) or to read a prepared statement, during a hearing, (*Townsend v. U.S.*, (C.A.D.C., 1938) 95 F.2d 352 *cert. den.* 303 U.S. 604) has been held not to excuse the witness' refusal to be sworn or to answer questions. The committee, not the witness, must determine the procedure to be followed in the investigation. Even when the statement was a lengthy legal document in support of objections to the authority of the committee to conduct its inquiry, denial of the opportunity to read it did not warrant a refusal to answer when the witness was given adequate opportunity to state her objections (*Barenblatt v. U.S.*, (C.A.D.C., 1957) 240 F.2d 875, vacated and remanded 354 U.S. 930 (1957), *af'd.* 252 F.2d 219, *af'd.* 360 U.S. 109). "We cannot", said the Court, "within the limited power of a court to review the procedures of a congressional committee, insist that such a committee interrupt its proceedings for detailed examination of a lengthy attack on its power to ask a question or make any inquiry at all. Certainly the subcommittee had the right to insist that objections be cast in a reasonable form".

If counsel for witness is given a copy of the chairman's opening remarks, the committee may refuse to permit defendant to introduce an opening statement respecting authorization of the committee and consequent lack of defendant's knowledge of nature of purpose of the investigation (*U.S. v. Fort*, (C.A.D.C., 1970) 443 F.2d 670).

A witness may make timely and succinct objections at a hearing, of the kind noted, and these must be ruled on by the chairman alone (see, *U.S. v. Fort*, *supra*). The ruling must be clear-cut enough, and give the witness a clear choice between standing on her objections and compliance with the ruling, that is, as to authorization, pertinency, and so forth, in order to sustain a conviction for contempt under 2 U.S.C., § 192 (*Watkins v. U.S.*, 354 U.S. 178 (1957); *Bart v. U.S.*,

349 U.S. 219 (1955); *Emspark v. U.S.*, 349 U.S. 190 (1955)). If an objection is raised as to the ambiguity of a subpoena, and respondent is in doubt as to the records sought, or finds it unduly burdensome, she should have advised the subcommittee before hand (*McPhaul v. U.S.*, 364 U.S. 372 (1960)).

If a witness objects that the information sought is not pertinent she must explicitly make such an objection (*Barenblatt v. U.S.*, 360 U.S. 109 (1959), rehearing den. 361 U.S. 854).

(e) After disposing of the objections of the witness, the chairman states that the subcommittee has the proper authorization and the records sought are pertinent to the investigation. He then orders the witness to produce them. He should also inform the witness that failure to comply could lead to contempt proceedings. If the witness refuses to comply the hearing can be adjourned subject to the call of the Chair.

A majority of the subcommittee can subsequently at a later time (several days) meet to decide if a contempt citation should be recommended to the full committee. This is the usual course of proceedings as long as the necessary number was present when the contumacious act occurred.

If the subcommittee recommends to the full committee that a contempt citation should issue, it might send a copy of the recommendation to the witness by registered mail with the date when the recommendation would be sent to the full committee. This is not necessary but it would allow the witness a chance to purge herself by producing the records that had been subpoenaed. Such notice, plus listening to and ruling on real objections at the hearing should cover any due process objections that the witness might later attempt to raise in court (the subcommittee will have shown its authority to investigate the activities of the witness, and the pertinency of the records and papers that had been subpoenaed (*Watkins v. U.S.* supra)). It will have clearly ruled on objections by the witness and if it overruled the witness it will have instructed the witness that her continued refusal to produce will make her liable to prosecution for contempt of Congress. It will have directed the witness to produce in order that the element of deliberate refusal is made clear (*Emspak v. U.S.*, supra)). The opportunity for the witness to purge herself as a result of the notice from the subcommittee provides even more due process than is required.

ROBERT L. TIENKEN,
Senior Specialist in American Public Law.

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

MEMORANDUM

Date: March 15, 1978.

To: Members of the Subcommittee on Oversight and Investigations.

From: Chairman John E. Moss.

Subject: Information related to the citation of Patricia Atthowe, proprietor of Research West, Inc., for contempt of Congress.

INTRODUCTION

This memorandum provides information which you may find useful during the consideration of the citation of Patricia Atthowe, proprietor of Research West, Inc., for contempt of Congress. Organized topically, it reviews in summary fashion the key issues of substance and procedure which you are likely to encounter during the pendency of this matter.

THE SUBCOMMITTEE'S INVESTIGATION

The subcommittee is currently engaged in an investigation of allegations that regulated utilities have directly, or through their contractors, unduly intruded into the privacy of Americans. Concern has focused on the extent to which critics of nuclear power have been subjected to surveillance and unreasonable recordkeeping.

In both California and Georgia, the press has reported that utilities have kept extensive records on critics of nuclear power. It has been suggested that these records may be, in part, generated improperly or inappropriately.

Two principal issues concern the subcommittee. These are (1) the extent to which and the ways in which utilities may be intruding into the privacy of Americans and (2) the extent to which ratepayers may be footing the bill for such activities.

Ms. Atthowe's firm Research West, Inc., provides utilities with information on political dissidents and alleged subversives. Her firm is well paid; its activities are apparently substantial. Records of the Federal Energy Regulatory Commission indicate that Pacific Gas and Electric Co., a California utility, has paid Research West over \$80,000 during the last 5 years. In the east, FERC records indicate that Georgia Power has expended over \$7,000 during the period 1975-76.

In order to understand the services rendered utilities by Research West, the subcommittee authorized subpoena No. 95-2-25 to obtain relevant documents. After several attempts by the subcommittee to address Ms. Atthowe's concerns, she refused to comply with the subcommittee's subpoena.

SUBCOMMITTEE JURISDICTION

By a resolution of the committee on Interstate and Foreign Commerce agreed to on February 8, 1977, this subcommittee was given the "Responsibility for oversight of agencies, departments, and all programs within the jurisdiction of the full committee and to conduct such investigations within such jurisdiction." Clause 1. (l) of rule X of the Rules of the House of Representatives provides the Committee on Interstate and Foreign Commerce with jurisdiction over, among other matters, "interstate and foreign commerce generally"; "petroleum and natural gas"; "regulation of interstate transmission of power"; and "consumer affairs and consumer protection." In addition, clause 3. (h) imposes on the committee the responsibility of "reviewing and studying on a continuing basis all laws, programs and Government activities relating to nuclear energy."

With these grants of jurisdiction come serious oversight and investigative responsibilities. Rule X provides that:

[E]ach such committee shall review and study any conditions or circumstances which may indicate the necessity or desirability of enacting new or additional legislation within the jurisdiction of that committee (whether or not any bill or resolution has been introduced with respect thereto), and shall on a continuing basis undertake future research and forecasting on matters within the jurisdiction of that committee.

CONGRESSIONAL POWERS OF OVERSIGHT AND INVESTIGATION

Congress has a duty to ascertain whether laws are being enforced before it considers amending those laws or enacting new laws. This power has been upheld by the Supreme Court from 1791 to 1975. In the leading case in this area, the Court has stated:

The power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them. It comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste. *Watkins v. United States*, 354 U.S. 178, 187 (1957).

CONGRESSIONAL POWER TO ISSUE SUBPENAS

To oversee the administration of Federal laws and to investigate matters which may need legislation, Congress has the power to use compulsory process; that is, issue subpoenas for documents, compel testimony (except when it would be self-incriminating), and have such testimony pursuant to laws providing for prosecution of perjury. The rationale for compulsory process is summarized by the Supreme Court in *McGrain v. Daugherty*, 273 U.S. 135, 175 (1927):

Experience has taught that mere requests for information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed . . .

CONGRESSIONAL CONTEMPT POWERS

The Supreme Court has upheld congressional contempt power because:

Here, we are concerned, not with an extension of congressional privilege, but with vindication of established and essential privilege of requiring the production of evidence. For this purpose, the power to punish for contempt is an appropriate means. *Jurney v. MacCracken*, 249 U.S. 149, 150 (1935).

A contempt proceeding can take one of two routes. The House resolution can direct the Speaker to certify the contempt and forward it to the local U.S. attorney for prosecution pursuant to 2 U.S.C.

192 which provides for maximum penalty of 1 year in jail and \$1,000 fine. Or the House resolution can direct the Speaker to order the Sergeant at Arms to summon Ms. Atthowe and bring her before the House to explain why she should not be held in confinement. Upon receipt of the summons, Ms. Atthowe can seek a writ of Habeas Corpus.

SUBCOMMITTEE CONSIDERATION OF A CONTEMPT

Citation for contempt is a formal matter. The chairman generally establishes the major elements for prosecution under 2 U.S.C. § 192 in his opening statement. These include (i) the authority of the subcommittee, *United States v. Orman*, 207 F. 2d 148; (ii) the legislative purpose of the investigation (though a valid legislative purpose is presumed by the courts) *McGrain v. Dougherty* 273 U.S. at 153; and (iii) the pertinency of the subpoenaed material, *Sinclair v. United States*, 279 U.S. 263.

This is followed by the questioning of the individual named in the subpoena. Questions are usually directed at laying out in a summary way the individual's defenses, if any.

After a ruling on the adequacy of the stated defenses and an order directing the witness to comply with the subpoena, it is in order to consider a resolution citing the individual for contempt of Congress. This resolution may be offered and voted upon at a subsequent meeting.

EXPECTED DEFENSES

Ms. Atthowe is expected to raise two defenses to the subcommittee subpoena. First she will allege that she is a journalist and as a consequence her "sources", legal or otherwise, are immune from congressional review. Second she will assert that the subcommittee will reveal her sources and methods thereby diminishing their economic value. She regards this as a "taking" without compensation, and a violation of the fifth amendment.

With respect to her first defense, the staff, in conjunction with the Library of Congress, has been able to identify only one article written by Ms. Atthowe since 1964 (attached). Her status as a journalist is highly suspect.

In any event, the law would allow the Congress to review the sources of even a clearly legitimate journalist, *Barenblatt v. United States*, 360 U.S. 109; *Eastland v. United States Servicemen's Fund*, 421 U.S. 491; *Branzburg v. Hayes* 408 U.S. 665.

With respect to her second probable contention that the subcommittee may be "taking" her property without just compensation, two points need to be made. First, the economic value of her sources and methods are not diminished unless they are revealed to the public. In the case of *Ashland Oil Co. v. Federal Trade Commission, et al.*, 409 F. Supp. 297, 308 involving this subcommittee, the court stated that with respect to release of sensitive documents "the courts must presume that the committees of Congress will exercise their power responsibly." I agree. As a consequence, her defense is not yet ripe because there is no showing that release of her materials is planned or imminent.

Second, any diminishment in the value of her sources and methods would be incidental to the exercise of Congress' constitutional investigatory authority. *Omnia Co. v. United States*, 261 U.S. 502, 508;

Chicago, Burlington and Quincy Ry. v. Illinois 200 U.S. 561, 594; *Candor Operating Co. v. Sawhill*, 514 F.2d 351, 361. As a consequence, no compensation is required.

Attachment.

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., June 5, 1978.

To: House Subcommittee on Oversight and Investigations. Attention: Mr. Greene.

From: American Law Division.

Subject: Defenses to subcommittee subpoena Duces Tecum by respondent Ms. Atthowe.

1. Service of subpoena was allegedly defective because a signed copy was not left with Ms. Atthowe.

This argument is irrelevant. There have never been any court cases requiring personal service of a congressional subpoena upon a respondent.

The Rules of the House do provide that, "authorized subpoenas shall be signed by the chairman of the committee or by any member designated by the committee" (rule XI, cl. 2, (m), (2), (A)). A committee and the House, in order to cite a witness for contempt pursuant to 2 U.S.C. § 192, must follow the rules (*Ex parte Yellin*, 374 U.S. 109 (1963)).

However, there is nothing in the House Rules respecting how a committee subpoena is to be served or where (Note—the House has authorized a subpoena duces tecum by registered mail (1 Hinds, *Precedents of the House of Representatives*, § 731, and by telegraph (3 Hinds', supra, § 1810)). In *United States v. Shelton*, 148 F. Supp. 926 ((D.C.D.C. 1957), aff'd 280 F.2d 701, reversed on other grounds 369 U.S. 749), a Senate subcommittee subpoena was held to have been served when it was served upon respondent at his place of business and not at his residence.

What is significant is that Ms. Atthowe appeared at the subcommittee hearing. Even if such appearance were deemed to be voluntary, such a witness is subject to 2 U.S.C. § 192 (*Sinclair v. United States*, 279 U.S. 263 (1929)). In addition, the fact that a witness, who, in the first instance voluntarily appeared before a congressional committee, does not exempt him from subsequent subpoena by the committee (*Dennis v. United States*, 171 F.2d 986 (C.A.D.C. 1949), aff'd 339 U.S. 162, rehearing denied 339 U.S. 950).

Consequently, even though Ms. Atthowe was served with a signed subpoena shortly before the subcommittee hearings, thus disposing of any objections that might be made about the first unsigned subpoena served upon a clerk at her place of business, the question would be moot anyway since she voluntarily appeared at the hearing.

2. The materials required by the subpoena are covered by newsman's privilege (first amendment—nondisclosure of sources) and are therefore exempt. Submission of the material to the subcommittee would impose a chilling effect upon scholarship based in good part upon anonymous sources.

This argument is subject to the balancing test whereby the public, legislative need for the information must be balanced against the personal interests of the witness. First amendment rights are not an

absolute bar to a congressional investigation. (*Barenblatt v. United States*, 360 U.S. 109 (1959)).

In *Barenblatt*, the Court upheld the witness' conviction for refusing to answer the questions. It said:

Undeniably, the first amendment in some circumstances protects an individual from being compelled to disclose his associational relationships. However, the protections of the first amendment, unlike a proper claim of the privilege against self-incrimination under the fifth amendment, do not afford a witness the right to resist inquiry in all circumstances. Where first amendment rights are asserted to bar governmental interrogation resolution of the issue always involves a balancing by the courts of the competing private and public interest at stake in the particular circumstances shown.

The first question is whether this investigation was related to a valid legislative purpose, for Congress may not constitutionally require an individual to disclose his political relationships or other private affairs except in relation to such a purpose. See *Watkins v. United States* [354 U.S. 178, 198 (1957)].

The Supreme Court has yet to recognize a newsmen's privilege in the federal system. In *Branzburg v. Hayes*, 408 U.S. 665 (1973), the Court balanced the public interest in prosecuting crimes as against the public interest in news about crimes from undisclosed sources. It concluded that it could not—

* * * accept the argument that the public interest in possible future news about crime from undisclosed, unverified sources must take precedence over the public interest in pursuing and prosecuting those crimes reported to the press by informants and in thus deterring the commission of such crimes in the future.

The case involved the refusal of a reporter to reveal his sources to a grand jury.

In, *In re Lewis*, 384 F. Supp. 133 (D.C. Calif. 1974), aff'd 517 F.2d 236, the court held that under Federal law, there exists no privilege granting newsmen a testimonial privilege which would cause the failure of a radio station newsmen to bring to the Federal grand jury the items sought by a subpoena duces tecum, the original copy of a communique received by him containing a certain message from the New World Liberation Front pertaining to certain bombings and threats of bombings. It stated that Congress, and particularly the House and Senate Judiciary Committees, emphatically refuted the pleas of news media for a "Federal shield law" and specifically expressed its determination that the Federal rules governing evidence and privileges in Federal criminal cases, and even most Federal civil cases, in fact all except diversity, interpleader, and removal, must be governed by "the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experiences."

Procedure in congressional committees is not rigidly bound by the Bill of Rights (see, *Hannah v. Larcke*, 363 U.S. 420 (1960)), and there is no constitutional requirement that a committee grant a newsmen's privilege to a witness. The closest the House came to the situation was

a possible contempt by Daniel Schorr before the Committee on Standards of Official Conduct, but the House made no express conclusion on the matter.

Ms. Atthowe may make the claim and if she is a true journalist the subcommittee can consider it and deal with it. If she is not a true journalist there is no substance to the claim and the subcommittee need not consider it at all.

3. The subpoena constitutes an unreasonable search and seizure and is therefore prohibited by the fourth amendment.

Where a committee has authority to conduct an investigation, the legislative purpose is granted, and the material it seeks are pertinent, a fourth amendment objection is outweighed (*Zicarelli v. New Jersey State Commission of Investigation*, 261 F.2d 129 (N.J.), affirmed, 406 U.S. 472 (1971)).

While it has been held that the amendment protects witnesses before congressional committees from unreasonable searches and seizures (*McSurely v. McClellan*, 521 F.2d 1024 (C.A.D.C. 1975)), each situation must be judged on its own merits and adequacy or excess in the breadth of the subpoena are matters variable in relation to the nature, purpose, and scope of the inquiry. Depending upon the scope of the investigation a subpoena duces tecum should describe the documents and records sought with all of the particularity the nature of the inquiry and the situation would permit, and the description contained in the subpoena should be sufficient to enable the prospective witness to know what particular documents were required and to select them accordingly (*Oklahoma Press Publishing Co. v. Willing*, 327 U.S. 186 (1946)).

The subcommittee is engaged in an investigation of allegations that regulated utilities have directly, or through their contractors, unduly intruded into the privacy of Americans. Concern has focused on the extent to which critics of nuclear power have been subjected to surveillance and unreasonable recordkeeping.

Ms. Atthowe's statement to the subcommittee about the activities of her detective agency in this respect and her concern for her records and materials demonstrate that she is aware of the purpose of the investigation and the pertinency of the materials sought by the subcommittee's subpoena.

If probable cause for the issuance of a subpoena exists, fourth amendment rights will not be abridged (*Oklahoma v. Press Pub. Co.*, supra). If the subpoena specifies with reasonable particularity the subjects to which the documents called for, relate, there is no abridgement (*Brown v. United States*, 276 U.S. 134 (1928)). The description contained in the subpoena was sufficient to enable the witness to know what particular documents and records were required and to select them accordingly (*Brown v. United States*, supra).

The subpoena in question asked for:

(1) Materials about persons opposed to atomic energy or deemed to be a threat to the security of nuclear facilities or activities.

(2) Materials on the means used by Ms. Atthowe's corporation to secure information about such persons.

(3) Materials on the means used by the Federal, State, local and/or private agencies or groups that supply such information to Ms. Atthowe's corporation.

There is arguably nothing here that is "oppressively burdensome" (*Shelton v. United States*, 404 F.1d 129 (1968)). This is no blanket subpoena fishing expedition (*Hearst v. Black*, 84 F.2d 68 (1936)).

In any event the witness cannot seek to quash the subpoena or seek to enjoin its application for whatever reason where the subcommittee acts in a legislative capacity (Art. I, sec. 6, Speech or Debate Immunity) (*Eastland v. United Servicemen's Fund*, 421 U.S. 491 (1975)).

(4) Disclosure would jeopardize ongoing criminal investigations and potentially jeopardize a pending lawsuit.

This objection is premature. There is no reason to conjecture whether the subcommittee will hold open or closed hearings about the materials sought in the subpoena. Transmission of pertinent documents to a committee engaged in a legitimate investigation is not tantamount to public disclosure (*Ashland Oil Co. v. F.T.C. et al*, 409 F. Supp. 297 (1976)).

A committee may make a policy decision that the legislative interest and need for information secured by an investigation is superior to the public interest in enforcement of the criminal laws in a particular instance. Courts have no authority to enjoin congressional investigations (see, *Delaney v. United States*, 199 F.2d 107 (C.A. 1st, 1951)). "... a congressional committee which is engaged in a legitimate legislative investigation need not grind to a halt whenever responses to its inquiries might potentially be harmful to a witness in some distant proceeding. . . ." (*Hutcheson v. United States*, 369 U.S. 599 (1961)).

During the Watergate period congressional investigations into the subject were carried on simultaneously with grand jury investigations.

If a complaint is made that pretrial publicity stemming from a congressional investigation would be detrimental to a fair trial, the Court can continue (postpone) a trial until the effect of the publicity is dispelled, it can grant a change of venue, it can order the jury sequestered, and/or it can see to it that an assiduously thorough voir dire is conducted (see, "The power to Probe" James Hamilton, 1976, pp. 140-145 and cases cited therein).

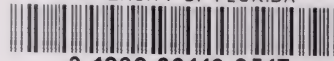
(5) Disclosure to the subcommittee would diminish the economic value of the material described in the subpoena and as a consequence the subcommittee would be "taking" property in violation of the fifth amendment.

This question has never been litigated. There is no certainty that confidential or trade secret information contained in material sought by congressional subpoena, has independent financial value. Assuming for the purposes of argument that it does, the claim of "taking" is arguably not valid since the injury that might result from the submission would appear to be incidental to Congress' constitutional investigatory authority (see, *Omnia Co. v. United States*, 261 U.S. 502 (1922); *Chicago, Burlington and Quincy Ry. v. Illinois*, 200 U.S. 561 (1906); *Condor Operating Co. v. Sawhill*, 514 F.2D 351 (T.R.C.A. 1975)).

It might be noted that sensitive trade information filed with executive branch agencies is available to congressional committees pursuant to the Freedom of Information Act (5 U.S.C. § 552 (e)).

ROBERT L. TIENKEN,
Senior Specialist in American Public Law.

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